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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ANTHONY EDWARD STUART

Appeal 2009-0155
Application 09/752,700
Technology Center 2400

Decided:¹ April 8, 2009

Before KENNETH W. HAIRSTON, JOHN A. JEFFERY,
and KARL D. EASTHOM, *Administrative Patent Judges*.

EASTHOM, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ The two month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134 from the Final Rejection of claims 1-6, 8-16 and 18-21, the only claims pending (Br. 2).² We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

According to Appellant, the invention improves upon conventional electronic program guides (EPGs). Conventional EPGs can only be scrolled back and forth in short intervals representing time frames of broadcast programming, e.g., one-half hour intervals. Therefore, to view program listings for programs to be shown several days in advance requires that the EPG be tediously and slowly advanced. Appellant's improved EPG employs a marker readily movable to notches along a time line, wherein such notches represent days, weeks and/or months into the past or future. Moving the marker along the time line to one of the notches triggers an appropriate display of programming associated with the time and day designated by the notch. (Fig. 4; Spec. 2:9 to 3:2; 12:7-21).

Claim 1, illustrative of the invention, follows:

1. A method for providing an electronic program guide, comprising steps of:

enabling a display on a display device, wherein the display includes a time line having notches representing discrete predefined time slots thereon

² Appellants most recent Brief (filed February 12, 2007) ("Br.") and the Examiner's Answer (mailed June 29, 2007) ("Ans.") detail the respective positions of the parties.

delineating times and days in the future from a current day and time to which a marker can be moved; enabling a user to move the marker to one of the notches delineating a desired day and time in the future, thereby causing to be displayed in a time window displayed on the display device a time period displaying indicia for programs to be broadcast during the time period on said desired day and time.

The Examiner relies on the following prior art reference:

Rauch	US 5,731,844	Mar. 24, 1998
Schlarb	US 6,664,984 B2	Dec. 16, 2003 (filed Feb. 10, 2000)
Ludtke	US 6,867,764 B2	Mar. 15, 2005 (effectively filed Mar. 22, 2000)
Schein	US 2005/0229215 A1	Oct. 13, 2005 (effectively filed Apr. 11, 1997)

The Examiner rejected:

Claims 1-5, 8-15, and 18-21 as obvious under 35 U.S.C. § 103(a) based on Rauch, Schein, and Ludtke.

Claims 6 and 16 as obvious under 35 U.S.C. § 103(a) over Rauch, Schein, Ludtke, Schlarb.³

³ The Answer fails to list Ludtke in the rejection of claims 6 and 16. However, page 10 of the Final Office Action (mailed July 11, 2006), lists “US 6,867,764 B2” (i.e., Ludtke’s patent number) in the rejection heading.
Continued on next page

ISSUE

Appellant's argument (Br. 6-9) regarding the obviousness rejection of claim 1 asserts that the Examiner erred in finding that the combined references teach an electronic program guide (EPG) including "a time line having notches representing discrete predefined time slots thereon delineating times and days in the future from a current day and time" as set forth in claim 1. Hence, the issue on appeal is:

Did Appellant show that the Examiner erred in finding that the references collectively teach "an electronic program guide" (EPG) including "a time line having notches representing discrete predefined time slots thereon delineating times and days in the future from a current day and time," as recited in claim 1?⁴

FINDINGS OF FACT (FF)

1. Rauch discloses an EPG schedule layout 200 having a time scroll bar 224 below program listings in a grid 210 format including slotted time designations running parallel to the scroll bar. Moving the scroll bar accordingly causes a change in the program listings based on the time of

Claims 6 and 16 depend respectively from claims 1 and 12. It is apparent from the record that the Examiner rejected the dependent claims with the same base references used to reject the independent claims, and further used the additional reference to Schlarb to address the limitations of the dependent claims. Therefore, the Examiner's failure to list Ludtke in the rejection of claims 6 and 16 in the Answer is deemed harmless error.

⁴ Appellant's arguments focus on independent claims 1, 8, 12, and 18, with only nominal distinctions, if any. Accordingly, pursuant to 37 C.F.R. § 41.37(c)(1)(vii), claim 1 is selected to represent claims 1-5, 8-15, and 18-21.

broadcast. Different days can be selected with day selector arrow buttons 220. Rauch also discloses a variable grid size with large numbers of time and channel entries, and expresses a desire to keep the program entry names at a readable size. (Rauch, col. 6, ll. 5-12; col. 6, l. 58 to col. 7, l. 8; Fig. 2).

2. The Examiner (Ans. 4) identified what reasonably appears to be a movable marker (*see* shaded/hatched rectangular area) in the time scroll bar 224 of Figure 2 of Rauch (*see also* col. 4, ll. 41-45, col. 7, ll. 1-3).

3. Schein discloses a similar EPG scroll bar 720 depicting a movable marker and showing times spanning over two different days (i.e., from 3:30 PM on one day to 7:00 AM on the next day) (Fig. 12B, ¶¶ 0080, 0083).

4. Ludtke discloses slider 14 having a movable pointer/marker 12 disposed along on a scroll bar 15 for any type of display screen. The slider allows users to scroll quickly to a vast array of desired information or data, overcoming slower prior art display systems. The slider has indexing marks: “Regardless of the mode, it is preferable for the slider to provide some indexing marks or other graphical information to indicate to the user what type of data will be entered as the slider is manipulated” (col. 4, ll. 47-50). The slider can be programmed to depict any type of indexed data, including different intervals of time. As depicted in Figures 5 and 6, the slider is indexed to include time designations bearing labels such as “today,” “next month,” “next year” 38, and “prev month.” (Ludtke, col. 1, ll. 28-39; col. 2, ll. 26-27; 48-51; col. 4, ll. 50-51; col. 6, ll. 11-24; col. 7, ll. 28-60).

5. Ludtke states: “[O]ne advantage of the invention is that it allows a user to quickly select the value of a data field by tapping the area of the screen devoted to showing the value, sliding or tapping a pointer on a slider to cycle th[r]ough [sic] possible choices, and then reselecting the area of the

screen devoted to showing the value to confirm and set the choice” (col. 6, ll. 11-16).

PRINCIPLES OF LAW

“[T]he examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability.” *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). Under § 103, a holding of obviousness can be based on a showing that “there was an apparent reason to combine the known elements in the fashion claimed.” *KSR Int’l v. Teleflex, Inc.*, 127 S. Ct. 1727, 1740-41 (2007). Such a showing requires:

“some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness” [H]owever, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.

Id., 127 S. Ct. at 1741 (citation omitted).

If the Examiner’s makes such a showing, the burden then shifts to the Appellant to overcome the *prima facie* case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. *See Oetiker*, 977 F.2d at 1445.

ANALYSIS

Appellant argues (Br. 7) that “the fact that the Examiner relies on Schein even when Rausch provides a complete solution for allowing users to scroll through program information for multiple days and times in an intuitive manner strongly suggests that the proposed combination is the product of impermissible hindsight reconstruction.” Appellant’s argument

amounts to the untenable assertion that a “simple substitution of one known element for another” would not have been obvious. *See KSR*, 127 S. Ct at 1740.

The argument is not persuasive for additional reasons. Rauch’s system is not “complete” for viewers who desire to simultaneously view broadcast information on an EPG that spans more than one day (*see* FF 1). Schein teaches viewing an EPG designating broadcast programming that spans at least two days (FF 3), reasonably suggesting more than two days, as desired. For example, viewers may wish to plan to view programs first that will only be broadcasted on the current day, as compared to programs designated to be broadcasted over two or more days in the future, including the current day – without switching back and forth between different screens as Rauch’s system requires (*see* FF 1). As the Examiner also reasoned (Ans. 5), such a chronological navigation manner of viewing information is “intuitive.”

Skilled artisans also would have recognized that Schein’s multiple day slider would have improved Rauch’s similar slider in a similar manner. Merely extending the time line to span more than one or two days while delineating the days spanned amounts to no “more than the predictable use of prior art elements according to their established functions.” *See KSR*, 127 S. Ct. at 1740.

Appellant’s arguments (Br. 8, 9) that none of the references, including Ludtke, teaches the indexed or notched slider delineating times and days in an EPG amount to “attacking references individually.” “[O]ne cannot show non-obviousness by attacking references individually where, as here, the rejections are based on combinations of references.” *In re Keller*, 642 F.2d

413, 426 (CCPA 1981). That is, the Examiner's rejection (Ans. 6, 7) was based on the combination of the teachings. In general, Rauch and Schein teach the claimed EPG and slider delineating times and days (FF 1-3), while Ludtke teaches a notched slider for indexing more than one day (FF 4, 5).

Moreover, Ludtke teaches notched /indexed sliders indexed over days, months, or years (*see* FF 4), contrary to Appellant's related argument (Br. 9) that Ludtke fails to teach any asserted deficiencies with respect to Rauch and Schein. Therefore, even if Appellant's claim requires a display of three different indexed days as Appellant asserts (*id.*), modifying Rauch's and/or Schein's time line slider to include three such indexed/notched days would have been obvious in light of Ludtke's particular teaching of multiple indexed days/months on a slider to readily access larger amounts of data (FF 4, 5). Such a modification would have allowed users to schedule desired broadcast viewings as discussed above, without displaying too much (unreadable) information at one time – a desire that Rauch discloses (FF 1).

Finally, Rauch teaches access to broadcast information associated with different days through the separate button 220 (FF 1). The button appears on the same screen as the time line, and allows users to access broadcast data at different days while maintaining a readable data size (FF 1). Thus, replacing Rauch's separate button and time line with Ludtke's combined notches/delineations along a time line, amounts to a simple rearrangement or substitution of similar elements and their established functions with no unexpected changes in those functions. *See KSR*, 127 S. Ct. at 1739-40.

For the reasons discussed above, Appellant has failed to demonstrate the Examiner erred in finding that the references collectively teach the

disputed limitations of claim 1. Therefore, we will sustain the obviousness rejection of claim 1, and claims 2-5, 8-15, and 18-21, which were not argued separately and fall with claim 1. We will also sustain the obviousness rejection of claims 6 and 16 based on the added teaching of Schlarb, since Appellant relies on similar arguments presented for claim 1 (*see* Br. 10, n.3 *supra*).

CONCLUSION

Appellant did not show that the Examiner erred in finding that the references collectively teach “an electronic program guide” including “a time line having notches representing discrete predefined time slots thereon delineating times and days in the future from a current day and time” as set forth in claim 1.

DECISION

We affirm the Examiner's decision rejecting claims 1-6, 8-16, and 18-21.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

tdl

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